

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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MENTAL HEALTH ASSOCIATION, INC.	:	
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Employer	:	Case No.: 1-RC-22449
	:	
-against-	:	
	:	
SERVICE EMPLOYEES INTERNATIONAL UNION	:	
LOCAL 509,	:	
Petitioner,	:	
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MOTION FOR SPECIAL PERMISSION
TO FILE BRIEF AMICI CURIAE BY
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA
AND COALITION FOR A
DEMOCRATIC WORKPLACE

The Chamber of Commerce of the United States of America (“Chamber”) and the Coalition for a Democratic Workplace (“the CDW”) move for special permission to serve and file a brief *amici curiae* on or before May 31, 2011 in support of Mental Health Association, Inc.’s (“MHA” or “the Employer”) position¹ that the National Labor Relations Board (“the Board” or the “NLRB”) retain its presumption in favor of on-premises, manual elections and that the Board reject the argument, raised by Petitioner Service Employees International Union, Local No. 509’s (“Local 509” or “the Union”)² that it be conducted away from the employer’s premises.³ See NLRB Casehandling Manual, Part II, Representation Proceedings §11302.2. In

¹ See Respondent’s [Employer’s] Answering Brief in Response to Petitioner’s Exceptions to Hearing Officer’s Report and Recommendations on Objections.

² See Local 509’s Exceptions to the Hearing Officer’s Report and Recommendations on Objections and supporting brief.

³ We file this motion in the event the Board chooses not to reject Local 509’s arguments on the situs of voting or the method by which ballots should be cast on grounds the argument is improperly raised, as suggested by the Employer, but instead chooses to address the issues raised the Union. In that case, a general invitation for briefing would be essential, in our opinion.

view of the importance of the issues, the movants also request that the Board issue a general invitation to all interested parties to serve and file briefs *amicus curiae* in this case on or before May 31, 2011, and to allow such further time as it deems appropriate for parties to serve and file responses thereto. The Chamber and CDW also intend to urge the Board to take this opportunity to clarify the time and manner in which a party to a representation proceeding may advance any argument that an on-site, manual election not be conducted.

The Chamber is the world's largest federation of businesses, representing 300,000 direct members and an underlying membership of over 3,000,000 businesses and professional organizations of every size and in every relevant economic sector and geographical region of the country. A principal function of the Chamber is to represent the interests of its members by filing *amicus curiae* briefs in cases involving issues of vital concern to the nation's business community.

CDW is a coalition that represents employers and associations and their workforce in traditional labor law issues. Consisting of hundreds of members, who represent millions of employers, CDW was formed to give its members a voice on labor reform, specifically, the Employee Free Choice Act. More recently, CDW has advocated for its members on a number of labor issues including non-employee access, an employee's right to have access to organizing information from multiple sources, and, on unit determination, issues.

The Employer has filed Exceptions to the Hearing Officer's Report and Recommendations on Objections and a supporting Brief, in which it disputes those portions of the Hearing Officer's Report sustaining certain objections filed by Local 509, and recommending that the Board conduct a new election. Neither the Chamber nor the CDW express any position on the merits of the parties' respective exceptions, except insofar as they address the method and location for conducting Board elections are conducted, and the timing and means for raising such issues to the Regional Director and the NLRB.

The Service Employees International Union ("SEIU") also has filed a motion for special permission to file a brief *amicus curiae* in support of Local 509's exceptions. It has appended a proposed brief. MHA has opposed the SEIU's motion. The matter is *sub judice*. The Chamber and the CDW will take no position on this question, but may address substantive issues raised by the SEIU's brief, in the event the SEIU's motion were to be granted.

CDW's members—the vast majority of whom are covered by the National Labor Relations Act (“NLRA” or “the Act”) or represent organizations covered by the NLRA—have a strong interest in the way the Act, and specifically Sections 9, providing for representation elections, is interpreted and applied by the Board. Further, CDW's members are interested in ensuring that the Board administers the Act in a just, efficient manner authorized by statute.

Both the Chamber and CDW have filed briefs *amicus curiae* in Board cases of significance to their memberships.

Local 509's exceptions to the Hearing Officer's Report and Recommendations on Objections, its supporting brief, and MHA's answering brief, raise the issue, *inter alia*, whether the Board's longstanding presumption in favor of manual elections conducted on the employer's Premises should be abandoned in favor of a new rule prescribing that all NLRB representation elections should be held at a neutral site, away from property under the employer's control; at least re-run elections, where the initial balloting has been overturned for election-day misconduct, should be so conducted, Local 509 contends.

These questions are of profound importance to the Board's administration of the Act. The NLRA was intended to give employees an opportunity to choose or reject bargaining agents in a NLRB-supervised secret ballot election. Manual elections on an employer's property have been shown to be the best means of affording that opportunity. A professed preference for a neutral-site election may be but a surrogate for seeking mail ballot elections as a rule; for holding manual elections off an employer's property surely will pose real and immediate problems for employees in casting a free and informed vote, for employers in managing their businesses efficiently and lawfully and for the Board in fulfilling its office. The pull toward mail

balloting may prove inescapable. However, the balance between manual elections and mail ballots has been struck. See San Diego Gas & Electric, 325 NLRB 1143 (1998). It favors manual elections on an employer's premises. The Chamber and CDW believe it should be kept. If there is to be even a thought of change in the presumption, it ought not to occur in a proceeding where only a few can participate.

Because of the significance of the issues raised and in light of the unusual posture of this proceeding, which is awaiting decision by the Board, the Chamber and CDW move that:


1. This motion for special permission to file a brief *amici curiae* be granted;
2. The Board grant the Chamber and CDW until May 31, 2011 in which to file and serve their brief, *amici curiae*; and
3. The Board issue a general invitation to all interested parties to file and serve *amicus curiae* briefs on the issues raised in this matter, as may be specified in a notice to be published by the Board.

WHEREFORE, the Chamber of Commerce of the United States of America and the Coalition for a Democratic Workplace request that their Motion for Special Permission to file a brief *amici curiae* by May 31, 2001, and that the Board issue an invitation to all interested parties to submit briefs, as aforesaid.

Respectfully submitted,

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By: _____


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Of Counsel for *Amicus Curiae*

Chamber of Commerce of the

United States of America

CERTIFICATE OF SERVICE

The undersigned certifies that on April 21st, 2011, he caused a true and accurate copy of the foregoing Motion for Special Permission to File Brief *Amici Curiae* by the Chamber of Commerce of the United States of America and Coalition for a Democratic Workplace to be sent via electronic mail to counsel for the Petitioner and the Employer, to NLRB Region 1, with a courtesy copy (via electronic mail) to counsel for the Service Employees International Union

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